

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19639
Docket Number MW-19501

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without prior notification to the General Chairman, it assigned or otherwise permitted fencing work at El Paso Yards to be performed by other than its B&B forces (System File MofW 152-723).

(2) Assistant Foreman J. E. Locke, Truck Driver L. R. James, Carpenters S. W. Hoskins, H. G. Crawford and Pete Celeya each be allowed 40 hours of pay at their respective straight time rates.

OPINION OF BOARD: Claimants are members of B&B Gang No. 14 at El Paso, Texas. Prior to the period involved in this matter, the Carrier assigned B&B Gang No. 14 to construct a chain link fence around a parking area used by Woods Industries, on Carrier's property, for the storage of new automobiles. During January 1970, it is alleged by Petitioner, Carrier assigned the work of removing the fence referred to above, constructing a new chain link fence around a larger parking area, and the work of constructing a large building to an outside contractor. The Petitioner claims that the contracting out of the fencing work was done without prior notice to the General Chairman as required by Article IV of the May 17, 1968 National Agreement.

Carrier does not deny that it failed to give the notice required by Article IV. Carrier stated that it had executed a lease with Woods Industries, Inc., effective March 3, 1970, for the operation by Woods Industries of an automobile distribution center. Carrier states that it entered into a contract for the construction of the various facilities provided for in the lease on September 10, 1969 (including the fence removal and construction) and that the fence work started on January 21, 1970.

Carrier contends, among other defenses, that the claim should be denied since the fence work was on land leased in its entirety and not used for railroad operating purposes. This argument and information was provided on the property and the fact of the lease was not questioned by the Organization on the property, which indeed supported the history of the leasing of the property in its Submission to this Board. Hence we do not find merit in the argument raised in Brief for the first time that Carrier failed to support its contention of a lease in force by evidence on the property. Petitioner has supplied no evidence at any time which would cast doubts as to the lease.

In a long line of Awards, starting with Award 4783, we have held that work on facilities owned by Carrier, but used for purposes other than the operation or maintenance of the railroad do not come under the scope of the applicable agreement. We have previously on a number of occasions dealt with similar claims involving the same parties and agreement here present; see Awards 9602, 10722, 11150, 11462, 14019 and 14263 among others. We have always been reluctant to set aside prior adjudications of disputes involving substantially similar issues unless such decisions are shown to have been palpably erroneous. In this case no such showing has been made. We conclude therefore, that the work in question herein, was performed on property leased by the Carrier, and not used in the operation or maintenance of its railroad; such work is not within the scope of the applicable schedule agreement.

With respect to Article IV of the May 17, 1968 National Agreement, since the work was not within the scope of the applicable agreement, no notice was required and the agreement was not violated. (See Awards 4783, 10722, 19253 and others).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.